

Internal Revenue Service

District
Director

Department of the Treasury

230 South Dearborn Street
Chicago, Illinois 60604

Employer Identification Number:

Person to Contact:

Telephone Number:

Refer Reply to:

CERTIFIED

1/27/93

Date:

NOV 09 1993

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

The information submitted discloses that you were incorporated on [REDACTED] under the nonprofit corporation laws of the State of [REDACTED]

The purpose for which your corporation is organized, according to your Articles of Incorporation, is "Administration and operation on a cooperative basis producing or furnishing goods, services, or facilities primarily for the benefit of its members who are consumers of such goods, services, or facilities."

According to information supplied in your Form 1023 submitted to our office in [REDACTED], your organization provides an outlet for the sale of handmade items by seniors or persons with disabilities. The organization accepts the items on a consignment basis at [REDACTED]% of each sale. The organization is a membership organization and is run by the members themselves. Members learn to ring up sales on the cash register and write sales receipts to assure proper credit to the member/contributor. The members also learn to receive, record, and mark merchandise as well as displaying it appropriately.

The sources of income for your organization are in order of size: consignment fees from sales, annual membership dues of \$[REDACTED], and occasional raffles. Consignment fees from sales in [REDACTED] comprised \$[REDACTED] out of total revenues of \$[REDACTED]. This amounts to [REDACTED]% of all revenues. The major expense of this organization were disbursements for the benefit of members which totalled \$[REDACTED] ([REDACTED]% of consignment sales passed on to member/contributor). The only other minimal expenses are for a small amount of compensation for rent, and some other expenses. The organization had an excess of revenue over expenses of almost \$[REDACTED].

7/22/93

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11-7-93

11-8-93

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings which inures to any private shareholder or individual.

Section 1.501(c)(3)-1 of the Income Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:

"(a) Organizational and operational tests. (1) In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. (2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in Section 501(c)(3)...."

"(c) Operational test. (1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals..."

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in Section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either organizational or the operational test it is not exempt.

Section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations provides that "an organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-(b)(4) of the Income Tax Regulations provides that an organization is not organized exclusively for one or more exempt purposes, unless its assets, upon dissolution, are dedicated to Section 501(c)(3) purposes.

Since your creating instrument does not provide for the distribution of assets to Section 501(c)(3) organizations upon dissolution, you are not organized exclusively for Section 501(c)(3) purposes.

In order to comply with the requirements of the organizational test, the organization's purposes, as set forth in its creating documents, cannot be broader than the purposes set forth in Section 501(c)(3) of the Code. Since your purposes are "not exclusively" limited to one or more exempt purposes described in Section 501(c)(3) of the Code, you fail to meet the organizational test.

Revenue Ruling 71-395, 1971-2 C.B. 228, provides that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under Section 501(c)(3) of the Code. The rationale used is that such a gallery is a vehicle for advancing the careers and promoting the sales of the works of the member artists. The gallery thus serves the private purpose of its members, which is not an exempt purpose.

The organization here described is a private cooperative enterprise for the economic benefit or convenience to members. The organization is operated primarily for the private benefit of members and any benefits to the community are not sufficient to meet the requirement of the regulations that the organization be operated primarily for charitable or educational purposes within the meaning of Section 501(c)(3).

We have concluded, based upon the facts and evidence on file, that you are not operated exclusively as a charitable or educational organization described in Section 501(c)(3) of the Code because a substantial amount of your activities and operations are directed towards the improvement and advancement of the professional interest of your members.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Code, since you are not organized and operated exclusively for charitable, religious, or other exempt purposes within the meaning of Section 501(c)(3).

You are required to file Federal Income Tax Returns.

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(c) of the Code.

If you do not agree with these conclusions, you may within 30 days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

If you do not protest this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available


administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

Please keep this determination letter in your permanent records.

If you agree with this determination, please sign and return the enclosed Form 6018.

If we do not hear from you within 30 days from the date of this letter, this determination will become final. In accordance with Code Section 6104(c), we will notify the appropriate State officials of this action.

Sincerely yours,


District Director

Enclosures:
Publication 892
Form 6018